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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/772,455	01/29/2001	Michael D. Rahn	RSW920000148US1	7151

7590 02/08/2006

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EXAMINER
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PAN, YUWEN

ART UNIT	PAPER NUMBER
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2682

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

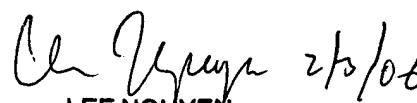
<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	<b>Application No.</b> 09/772,455	<b>Applicant(s)</b> RAHN ET AL.	
	<b>Examiner</b> Yuwen Pan	<b>Art Unit</b> 2682	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

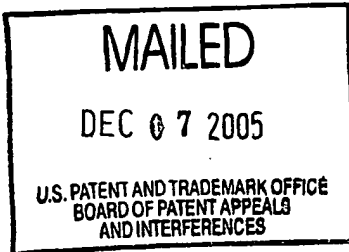
The Appeal Brief filed on 11 March 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.  
**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☒ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☒ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☐ Other (including any explanation in support of the above items):

  
LEE NGUYEN  
PRIMARY EXAMINER

UNITED STATES PATENT AND TRADEMARK OFFICE



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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte MICHAEL D. RAHN  
and  
DAVID B. LECTION

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Application 09/772,455

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was received electronically at the Board of Patent Appeals and Interferences on November 3, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below:

A review of the Image File Wrapper (IFW) indicates that appellants filed an Appeal Brief on March 11, 2005 using the format set forth in 37 CFR § 41.37(c). However, the Appeal Brief does not comply with 37 CFR § 41.37(c).

37 CFR § 41.37 states:

(a)(1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

(2) The brief must be accompanied by the fee set forth in § 41.20(b)(2).

(b) On failure to file the brief, accompanied by the requisite fee, within the period specified in paragraph (a) of this section, the appeal will stand dismissed.

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

. . . . .

(vi) *Grounds of rejection to be reviewed on appeal.* A concise statement of each ground of rejection presented for review.

. . . . .

(ix) *Evidence appendix.* An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may

also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) *Related proceedings appendix.* An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

(2) A brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or on the same date of filing an appeal and § 41.33 for amendments, affidavits or other evidence filed after the date of filing the appeal.

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

(e) The time periods set forth in this section are extendable under the provisions of § 1.136 of this title for patent applications and § 1.550(c) of this title for ex parte reexamination proceedings.

An in-depth review of the Appeal Brief indicates that the following sections are missing:

1) "Grounds of rejection to be reviewed on appeal," as set forth in 37 CFR § 41.37(c)(1)(vi);

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2) "Evidence appendix," as set forth in 37 CFR § 41.37(c)(1)(ix); and

3) "Related proceedings appendix," as set forth in 37 CFR § 41.37(c)(1)(x).

A substitute brief that is in compliance with § 41.37(c) is required. For more information, see the United States Patent and Trademark website [www.uspto.gov](http://www.uspto.gov), and, in particular, the web page entitled "More Information on the Rules of Practice Before the Board of Patent Appeals and Interferences, Final Rule" located at the following URL:

[www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html](http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html)

In addition, the Examiner's Answer mailed June 7, 2005 does not comply with the headings set forth in the new rules under 37 CFR § 41.37(c). Correction is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

1) to hold the Appeal Brief filed March 11, 2005 defective;

2) for notification to appellants to file a substitute Appeal Brief in compliance with 37 CFR § 41.37;

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- 3) for consideration of the substitute Appeal Brief;
- 4) to vacate the Examiner's Answer mailed June 7, 2005, and issue a new Examiner's Answer in compliance with the new rules which became effective on September 13, 2004;
- 5) to have a complete copy of any subsequent Examiner's Answer scanned into the IFW; and
- 6) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By: 

CRAIG R. FEINBERG  
Program and Resource Administrator  
(571) 272-9797

CRF:psb

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